SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE.

This section titles this Act as the "Coast Guard Authorization Act of 2003".

TITLE I – AUTHORIZATION

SECTION 101. AUTHORIZATION OF APPROPRIATIONS.

This section would authorize funds for fiscal 2004 at the following levels:

Appropriation	Thousands of Dollars
Operating Expenses	$4,838M
Capital Acquisitions	$ 797M
Retired Pay	$1,020M

"Operating Expenses" combines the previously separate accounts of Operating Expenses (OE), Reserve Training (RT), and Environmental Compliance and Restoration (EC&R).

"Capital Acquisitions" combines the previously separate accounts of Acquisition, Construction, and Improvements (AC&I) and Research, Development, Test, and Evaluation (RDT&E).

SECTION 102. AUTHORIZED LEVELS OF MILITARY STRENGTH AND TRAINING.

This section would authorize a Coast Guard end-of-year strength of 45,500 active duty military personnel for fiscal year 2004. The authorized strength does not include members of the Ready Reserve called to active duty for special or emergency augmentation of regular Coast Guard forces for periods of 180 days or less. This section also would authorize average military training student loads for fiscal year 2004 as follows:

Training	Student Years
Recruit/Special	2,500
Flight	125
Professional	350
Officer	1,200

TITLE II – HOMELAND SECURITY, MARINE SAFETY, AND ENVIRONMENTAL PROTECTION

SECTION 201. LAW ENFORCEMENT POWERS.

This section provides the Coast Guard with express authority to carry a firearm, seize property, and make an arrest under guidelines to be approved by the Secretary and the Attorney General.

In the aftermath of September 11th 2001, the Coast Guard's port security activities have increased significantly. A number of statutes, such as the Ports and Waterways Safety Act and Espionage Act, give the President or the Secretary, and by subsequent delegation, the Coast Guard, broad authority to protect waterfront facilities and other shore installations. This authority includes establishment of safety and security zones and searches and seizures of property while enforcing those zones. Additionally, the Maritime Transportation Security Act directed the Secretary to establish Maritime Safety and Security Teams with shoreside responsibilities. However, there is no express authority for a Coast Guard member to effect an arrest of a person who commits a Federal offense on shore. Similarly, although authority for a Coast Guard member to carry a firearm in the performance of official duties is inherent within the Coast Guard's status as an armed force, there is no express authority to do so.

SECTION 202. STOPPING VESSELS; IMMUNITY FOR FIRING AT OR INTO VESSEL.

This section makes discretionary the requirement to fire a warning shot as a condition precedent to indemnification if firing such a warning shot is not practical. It also renews the application of the indemnification provision to non-Coast Guard military aircraft to which one or more Coast Guard members are assigned.

The Coast Guard is authorized to board, examine, and search vessels to detect violations of U.S. law. It may use "all necessary force to compel compliance", including the use of disabling fire to stop a vessel that refuses to comply with a lawful order to stop. Government personnel operating from Coast Guard vessels or aircraft and U.S. Navy vessels with Coast Guard members aboard are indemnified from damages resulting from the use of disabling fire. However, the indemnity applies only if a warning shot is given prior to the use of disabling fire. In some instances, it may be dangerous or impracticable to fire warning shots. Warning shots are generally fired near, but not at, a non-compliant vessel, so may pose a risk to others if used in congested waters or near shore. Disabling fire is specifically targeted at a particular vessel so it does not present a risk to others.

In 1999, the Coast Guard authority to fire warning and disabling shots at maritime vessels was temporarily extended to U.S. Navy aircraft on which members of the Coast Guard are aboard. This authority expired on September 30, 2001, and required the Secretary of Defense, before proceeding with its implementation, to provide the Congress a report regarding the Department's plans for the safe and effective execution of this authority.

The Department of Defense report, dated June 20, 2000 and submitted to the Congress on or about August 31, 2000, concluded that the benefits to be derived in drug interdiction from the use of force from naval aircraft are outweighed by resource considerations and risk. Although this conclusion was consistent with prior Navy

positions on this matter, the Administration's Fiscal Year 2004 legislative proposal supports the renewal of the expired use of force authority for military aircraft.

SECTION 203. MARITIME SECURITY AUTHORITY.

This section allows state and local law enforcement personnel to make warrantless arrests for violations of the Espionage Act of 1917 (50 U.S.C. 191-98), if authorized in individual orders or regulations.

In most ports state and local authorities have overlapping or concurrent jurisdiction over many actions that would constitute a violation of the Espionage Act. However, violation of a federal order is not necessarily a violation of state law. This amendment will provide state and local law enforcement personnel the authority to detain and, if necessary, arrest those suspected of violating a federal order or regulation if so authorized by that order or regulation. It will remove the possibility of state or local officers facing the question of "detention tantamount to arrest" in the limited circumstances when the actions violate a federal order but do not violate state law.

SECTION 204. REVISION OF TEMPORARY SUSPENSION CRITERIA IN SUSPENSION AND REVOCATION (S&R) CASES.

This section 1) corrects a drafting error, and allows the Coast Guard to temporarily suspend or revoke a merchant mariner's credentials (MMCs) if the mariner has been convicted of certain National Driver Register Act (NDRA) offenses; and 2) provides authority to temporarily suspend an MMC if the holder threatens the security of a vessel or the port.

Under current law, the MMC could only be temporarily suspended or revoked for a NDRA conviction if the mariner was acting under the authority of the credential when the NDRA violation occurred. Since there are no reasonable scenarios under which a mariner will commit a motor vehicle-related offense while on board ship, this section restores the intent of the provision to allow suspension or revocation after a conviction for operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance, or a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

Current law allows for longer-term suspension or revocation of the MMC as a result of a NDRA suspension after a suspension and revocation hearing. The provision amended by this section only deals with temporary suspensions or revocations of no more than 45 days prior to a hearing.

SECTION 205. REVISION OF BASES FOR SUSPENSION & REVOCATION (S&R) CASES.

This section 1) allows the Coast Guard to suspend or revoke a merchant mariner's credentials (MMC) if the mariner commits an act of incompetence whether or not the mariner is acting under the authority of the MMC at the time the act occurs; and 2) adds security threat as a basis for which the Secretary may suspend or revoke an MMC.

Under current law, the Coast Guard can only undertake suspension and revocation proceedings if the mariner commits an act of incompetence while acting under the authority of the MMC. Therefore, even if the Coast Guard has evidence that a credential holder is physically or professionally incompetent, under current law the agency must wait until the mariner actually commits an act of incompetence while acting under the authority of their MMC before suspending or revoking an MMC. This section will allow the Coast Guard to initiate a suspension and revocation proceeding without having to wait for a marine casualty to occur if the agency has sufficient evidence of incompetence.

SECTION 206. REMOVAL OF VESSEL OPERATING REQUIREMENTS EXEMPTION FOR FISHING AND RECREATIONAL VESSELS.

This section eliminates the current exemption for vessels under 300 gross tons from requirements to carry navigation and communication equipment. This will allow the Secretary to require all vessels, including fisheries and recreational vessels, to install communications and navigation equipment. Without such equipment, no reliable and immediate means exists for the Coast Guard to establish radio communications with vessels that are in distress or may pose a security risk.

SECTION 207. MARKING OF UNDERWATER WRECKS.

This section authorizes the Coast Guard to excuse owners of vessels, rafts, or other craft that are wrecked and sunk in a navigable channel from using lighted buoys or beacons to mark their sunken craft.

Under current law, the owner or operator of a vessel wrecked and sunk in a navigable channel must immediately mark it with a "buoy or beacon during the day and a lighted lantern at night", and maintain the marker until the wreck is removed. In navigable channels on the Western Rivers, use of a lighted aid to mark a wreck is generally not practicable due to the fast current and floating debris common in those rivers. Lighted aids, which are larger and heavier than unlighted markers, tend to submerge in the fast current, and are pushed off station by the force of the current on debris snagged by the aid. It is largely for this reason that of the over 10,000 buoys positioned by the Coast Guard to mark navigable channels on the Western Rivers, only 12 are seasonal lighted buoys, and those are limited to pooled waters behind dams where current is not a factor. Mariners operating vessels on these rivers are accustomed to navigating with unlighted buoys. Due to the failure of owners or operators to mark their wrecked vessels, the Coast Guard performs much of this work. The Coast Guard generally uses unlighted buoys for this purpose.

SECTION 208. PROHIBITION OF CERTAIN ELECTRONIC DEVICES AND PORTS AND WATERWAYS PARTNERSHIPS/ COOPERATIVE VENTURES.

This section authorizes the Secretary to 1) prohibit the use of certain electric and electronic devices that interfere with communications or navigation equipment; 2) enter into partnerships and cooperative ventures with non-Federal entities to carry out Ports

and Waterways Safety Act vessel operating requirements, including vessel traffic services; and 3) convey or lease Coast Guard property to such partners.

The potential exists for electric and electronic devices to create harmful interference to global positioning system (GPS) navigation receivers, maritime radars, communications equipment, and other systems aboard vessels. This section gives the Coast Guard the authority to prohibit those devices if it is determined that they pose a threat to the safety of vessels.

With the increased reliance on GPS, interference to GPS receivers could become a significant problem, especially when GPS systems are integrated with automatic heading control and dynamic positioning systems that control the navigation and movement of the vessel. Interference has been known to cause GPS systems to generate false positions. A slight position "error" may cause enough of a heading change to run a ship aground.

In 1987, the Coast Guard granted a license to the Marine Exchange of Los Angeles/Long Beach to occupy Coast Guard owned property. The Marine Exchange has since made improvements to the property and has installed vessel tracking radar and extensive communications, data processing and other equipment. In 1993, Congress authorized the Coast Guard to provide personnel support to the Marine Exchange to jointly operate a Vessel Traffic Information Service. This operational partnership has been successful, and will serve as a model for future partnership ventures in other ports authorized under this proposal.

Current law limits the Coast Guard's authority to lease or convey Coast Guard controlled property. This section extends the existing lease authority from five to 20 years, and waives certain existing restrictions on property conveyance when necessary to out Ports and Waterways Safety Act partnerships

SECTION 209. REPORTS FROM CHARTERERS.

This section authorizes the Secretary to require reports from vessel charterers to ensure compliance with laws governing vessels engaged in coastwise trade and in the fisheries. Current law authorizes the Secretary to require such reports from vessel owners and masters to confirm the qualifications of their vessels to engage in coastwise trade and the fisheries. No similar authority exists with respect to charterers. Confirmation of the qualification to engage in the coastwise trade and in the fisheries requires information beyond the qualification of the vessel itself and the vessel owner. It is often necessary to verify citizenship information about a vessel charterer.

SECTION 210. AMENDMENTS TO VESSEL RESPONSE PLAN REQUIREMENTS.

This section allows the President to issue regulations requiring non-tank vessels of 400 gross tons and greater that carry oil as fuel for main propulsion to prepare vessel response plans. Current law requires such plans for vessels that carry oil in bulk as cargo. This section also includes the list of Noxious Liquid Substances (NLSs) under the

International Convention for the Prevention of Pollution from Ships, within the group of hazardous substances for which the Coast Guard may require response plans.

Current law does not require response plans for non-tank vessels (passenger, dry bulk, container, and other commercial vessels). Internationally, the International Maritime Organization imposes the same pollution response planning standards on both tankers and non-tank vessels. Several states have also enacted laws requiring response plans for non-tank vessels. Tank vessel owners contribute to the support of a nationwide network of spill response contractors, who may not be available to support non-tank vessel response needs because of an existing contractual obligation to the tank vessel owners. This lack of committed resources leaves the nation vulnerable to lessened or inadequate response to a major oil release from a non-tank vessel.

Currently, the oil production, transportation, and storage industries bear nearly the entire burden of maintaining the nation's oil spill response industry. However, non-tank vessels may carry as much or more oil than many small tank vessels, yet they are not required to plan for a spill emergency and may have no response resources available in the event of a spill. This proposal would spread the cost of maintaining private spill response infrastructure in the U.S. to a much larger portion of the shipping industry while reducing the risk of spills from non-tank vessels.

Current law mandates that the President issue regulations (subsequently delegated to the Coast Guard) requiring owners or operators of vessels and facilities to prepare response plans for incidents involving oil and hazardous substances. The list of hazardous substances covered includes only those defined as such by the U.S. Environmental Protection Agency (EPA) under the Federal Water Pollution Control Act.

The current list of hazardous substances as maintained by EPA does not include over 70% of current maritime chemical cargoes, including cargoes the Coast Guard considers to present the most imminent and substantial danger to the marine environment. Therefore, the Coast Guard's vessel and facility response plan regulations can only be applied to less than 30% of the cargoes the Coast Guard believes should be covered.

Also, the list of hazardous substances designated by the EPA is not in accord with the list of maritime cargoes under analogous international requirements. This disagreement arbitrarily imposes response plan burdens on some operators while excluding others, regardless of the actual threat to the marine environment.

Regulation 16 in Annex II of the International Convention for the Prevention of Pollution from Ships became effective on January 1, 2001. Regulation 16 requires certain owners or operators of vessels, certified to carry Noxious Liquid Substances (NLSs) in bulk, to have pollution plans onboard. These plans must receive the approval of the vessels' flag administrations by January 1, 2003. Of the 782 internationally recognized NLSs, the EPA list encompasses only 134 cargoes, and, those 134 cargoes do not represent the cargoes posing the greatest threat to the marine environment. This section harmonizes the domestic list of regulated bulk cargoes with the internationally maintained NLS list. That list reflects current maritime cargoes that the Coast Guard believes present a danger to the public health or welfare, including both a danger to

people and fish, shellfish, wildlife, shorelines, and beaches.

SECTION 211. REMOVAL OF MANDATORY REVOCATION FOR PROVED DRUG CONVICTIONS IN SUSPENSION & REVOCATION (S&R) CASES.

This section provides the Coast Guard with the discretion to suspend rather than revoke an MMC in cases where the mariner has been convicted of violating a State or Federal dangerous drug law. Under current law, the merchant mariner's credential (MMC) must be revoked if the credential holder is convicted of violating a State or Federal drug law, or found to use, or be addicted to, a dangerous drug. However, if evidence of proof of cure is provided, the credential of a drug user or addict need not be revoked. No option other than revocation is provided for drug offense conviction.

In 1994, the Coast Guard began using Settlement Agreements to resolve suspension and revocation cases without a hearing. These have been particularly successful in cases involving drug use where the Administrative Law Judge (ALJ) need not revoke credentials if the holder provides satisfactory proof of cure. The Coast Guard seeks the discretion to suspend a mariner's credentials in dangerous drug law conviction cases. Use of that discretion would allow the use of Settlement Agreements to resolve cases involving minor drug convictions. The Coast Guard believes that granting ALJs discretion to approve settlement agreements will improve the administration of the MMC program by removing the requirement for a hearing and revocation in every case involving a drug conviction. This will allow minor cases to be settled quickly leaving resources available to focus on more serious cases.

SECTION 212. RECORDS OF MERCHANT MARINERS' DOCUMENTS.

This section strikes the prohibition on "general or public inspection" of merchant mariner documents (MMDs). Striking this prohibition would bring merchant mariners' documents under the record protection and release policies of the Privacy Act, 5 U.S.C. 552a, and Freedom of Information Act (FOIA), 5 U.S.C. 552. Since no similar prohibition exists for merchant mariner's licenses, or certificates, this change provides equal treatment for all merchant mariners' credentials. With this change, release of information regarding all credentials will be governed by the Privacy Act and FOIA.

The prohibition against "general or public inspection" of MMDs was enacted decades before the Privacy Act and FOIA. The prohibition denies access to MMDs even to individuals with legitimate reasons for accessing that information. Even a request to verify a mariner's qualifications is refused by the National Maritime Center (NMC). NMC cannot confirm to an employer that a mariner is documented. The prohibition prevents family members and historians seeking information about deceased mariners, even upon presentation of a valid death certificate, from receiving information.

SECTION 213. EXEMPTION OF UNMANNED BARGES FROM CERTAIN CITIZENSHIP REQUIREMENTS.

This section exempts unmanned barges from the requirement all documented vessels, other than vessels with a recreational endorsement, be under the command of a

citizen of the United States. When an unmanned U.S. barge is in service with a tug, or other vessel, not under the operational control of a U.S. citizen, this requirement places an administrative burden on the barge operator that results in no practical benefit.

To comply with the U.S. citizen-in-command requirement, a U.S. citizen deckhand is sometimes designated as the "barge master" on the towing vessel, so that the unmanned barge will be "under the command of" a U.S. citizen. This solution is an artificial one that lends no real value, since the "barge master" is not in command as a practical matter, having no control over the tug. Rather, it is the master of the tug who has control of both the tug and the barge, and makes the decisions concerning navigation, crew hiring and firing, discipline, and compliance with laws and regulations. Designating a U.S. citizen "barge master" on board the tug does not confer decision-making authority on that citizen, but it could burden that person with the consequences of the tug operator's actions.

Under current law, an unmanned barge not under command of a U.S. citizen is subject to seizure and forfeiture. Strict enforcement of this requirement would effectively prohibit owners of U.S. documented barges from bareboat chartering their vessels to foreign interests. To comply with existing law, a U.S. citizen would have to be aboard any foreign tug that tows a bareboat chartered U.S. barge and be designated as in command of that barge. Lighter Aboard Ship (LASH) barges discharged in foreign ports cannot comply with this requirement unless the vessel carrying the LASH barges also carries at least one U.S. citizen who would leave the LASH carrier to accompany the barges when discharged.

SECTION 214. MARINE INDUSTRY AND OTHER EXCHANGE PROGRAMS.

This section authorizes the Coast Guard to implement a Marine Industry Exchange Program and, if appropriate later, to establish other employee exchange programs. The Marine Industry Exchange and similar programs would allow government and private sector participants to gain a better understanding of each organization, leading to stronger partnerships and an improved regulatory environment.

The Coast Guard currently conducts a Maritime Industry Training Program, under which Coast Guard officers are assigned in a training status to a nongovernmental organization. The Coast Guard proposes to expand this program to include the assignment of nongovernmental maritime industry personnel to the Coast Guard. However, statutory restrictions on acceptance of voluntary services make a legislative change necessary, prior to converting the program into a true, two-way exchange program.

Under current law, the Government may not accept voluntary services except as authorized by law. The Coast Guard has such authority to accept volunteer services in order to save life or protect property, and for the maintenance and improvement of natural and historic resources on Coast Guard property. This section extends that authority to Industry Exchange Programs. It provides that private industry participants assigned to the Coast Guard are not Federal employees (except relating to compensation for work-related injuries; tort claims; and government conflicts of interest and ethics

provisions). Exchange program participants would be prohibited from taking part in Coast Guard decisions that are likely to affect the commercial interest of the participant's employer or a competitor of the participant's employer.

SECTION 215. INCREASE CIVIL PENALTIES FOR VIOLATIONS OF CERTAIN BRIDGE STATUTES.

This section increases civil penalties for bridge violations under the Rivers and Harbors Appropriations Act of August 18, 1894; the Rivers and Harbors Appropriations Act of March 3, 1899; the Bridge Act of 1906; and the General Bridge Act of 1946 from the existing $1,100 per-day per violation to $25,000 per-day per-violation.

Bridges constructed across the navigable waters of the United States are considered obstructions to navigation and must provide for the reasonable needs of navigation. Civil penalties are for 20 potential bridge statute violations that range in amounts from $220 - $1,100 per day, involving matters such as failure to install and keep bridge lights and other signals in working order; unreasonable delay in operating a draw opening after signal; and failure to give timely notice of construction or modification events affecting navigation. Vessel owners and operators are also subject to penalties, -- for example, for signaling a drawbridge to open for a nonstructural vessel appurtenance unessential to navigation or easily lowered.

Current law sets the civil penalty at a maximum $1,000 per-day per-violation with each day a violation continued constituting a separate offense. With the minor adjustments allowed under the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, the maximum civil penalty is now $1,100 per-day per-violation. The Coast Guard maintains that current civil penalties for violations of bridge laws and regulations are insufficient to effectively discourage violations. The agency states that repeated and blatant violations imply that some bridge owners consider the existing penalties to be no more than a cost of doing business.

SECTION 216. CIVIL PENALTIES FOR FAILURE TO COMPLY WITH RECREATONAL VESSEL AND ASSOCIATED EQUIPMENT SAFETY STANDARDS.

This section 1) applies existing civil penalties regarding wrongful manufacturing of recreational vessels to wrongful labeling and failure to notify of a recall; 2) increases the maximum civil administrative penalty for these offenses from $2,000 to a maximum of $5,000; 3) increases the maximum for a related series of violations from $100,000 to $250,000; 4) adds a criminal penalty provision for knowing and willful manufacturing, labeling or failure to notify violations; and 5) increases the maximum civil administrative penalty for violating any other provision of chapter 43 or its implementing regulations, from $1,000 to $5,000.

Under current law, a person manufacturing or selling a recreational boat that contains a defect that creates a substantial risk of personal injury to the public, or that fails to comply with an applicable Federal recreational boat safety regulation, is liable to the United States Government for a civil penalty of not more than $2,000, except that the

maximum civil penalty may not be more than $100,000 for a related series of violations. A manufacturer violating any other provision of 46 U.S.C. Chapter 43 (or its implementing regulations) is liable for a civil penalty of not more than $1,000.

The Coast Guard believes these monetary penalties are too small to have a substantial deterrent effect and are insufficient to ensure (1) compliance with Federal recreational boat safety regulations, (2) the exercise of reasonable diligence by manufacturers in notifying owners and repairing defective boats (and associated equipment), or (3) innovative efforts by companies seeking to improve quality control and do a better job of building safe boats.

SECTION 217. OIL SPILL LIABILITY TRUST FUND; EMERGENCY FUND.

This section allows the emergency fund of the Oil Spill Liability Trust Fund (OSLTF) to be used to provide for Federal enforcement activities on behalf of the parent fund to recover from responsible parties. Under current law, the OSLTF pays claims, salaries, operating expenses, and scheduled expenditures associated with the Oil Pollution Act of 1990. Currently, a permanent annual amount of $50 million is available to the President from the OSLTF to respond to oil spills and initiate the assessment of natural resource damages under the Oil Pollution Act.

SECTION 218. OIL POLLUTION ACT (OPA) AMENDMENTS TO PROVIDE GREATER EQUITY IN OIL SPILL LIABILITY AND EFFICIENCY IN FEDERAL COST RECOVERY.

This section makes changes to definitions in OPA to conform the defenses against liability under that Act with those under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9601). OPA generally imposes liability for removal costs and damages on owners and operators of facilities and vessels from which there is a discharge, or a substantial threat of discharge, of oil into the waters of the United States, adjoining shorelines, or the exclusive economic zone, subject to the specific defenses set forth in the statute. The section also adds a definition of non-tank vessel to accompany the proposed changes in section 211 of this bill.

The proposed changes that conform OPA to CERCLA 1) exclude from the definition of "owner or operator" States that acquire facilities and vessels involuntarily and lenders that hold title to facilities and vessels only to protect their security interest; 2) clarify that all costs of Federal enforcement activities for the recovery costs of removal of discharged oil or prevention, minimization or mitigation of a substantial threat of discharge of oil, are recoverable in an action to recover "removal costs"; 3) clarify that a responsible party is liable for these enforcement costs in an action to recover removal costs under OPA; 4) clarify circumstance in which states are not responsible parties for offshore facilities; 5) allow certain owners who purchase property without reason to know of its potential for a discharge of oil, as well as heirs and certain government owners, to avail themselves of the third party defense to liability; and 6) raise the Coast Guard's authority to settle claims against polluters from $100,000 to $500,000.

SECTION 219. CLARIFICATION OF PAYMENTS MADE FROM THE OIL

SPILL LIABILITY FUND (OSLTF)

This section clarifies that funds from the OSLTF may be used to pay direct and indirect costs of adjudicating and processing claims under the OPA. It is retroactive to the date of enactment of OPA.

SECTION 220. REMOVAL OF ABANDONED BARGES.

This section establishes criteria for abandoned barges that the Coast Guard can be removed. The Coast Guard could remove a barge when: a) it is discharging oil or a hazardous substance or a substantial threat of such a discharge exists, and b) removal is determined necessary by the Federal On-Scene Coordinator (FOSC) to eliminate the discharge or substantial threat of discharge. This section also allows the Secretary to remove a barge without complying with the notice requirements if the Secretary determines that immediate removal is necessary, and corrects a typographical error in the original statute.

Under the Abandoned Barge Act, the Coast Guard is authorized to remove any barge that has been moored, sunk, or left unattended. Under the Clean Water Act (CWA), the Coast Guard must remove barges to respond in those instances where an abandoned barge is discharging or poses a substantial threat of discharging oil or a hazardous substance into the waters of the U.S. This section narrows the scope of Coast Guard abandoned barge response authority, and aligns it with the authorities under the CWA.

The Coast Guard has identified over 1,000 abandoned barges that are eligible to be removed under the current ABA. For barges that do not pose a pollution threat, there is no funding available for their removal. These barges are typically eyesores to the community and the Coast Guard argues that removal of eyesores is not an appropriate Federal function. The Coast Guard maintains that the factors that properly trigger Federal interest are: (a) a barge obstructs or threatens to obstruct navigation (the Army Corps of Engineers can take action under the Rivers and Harbors Act of 1899), or (b) an abandoned barge discharges or threatens to discharge oil or a hazardous substance (the FOSC can take action under the CWA.

For actions taken pursuant to this legislative proposal relating to oil discharges, Federal costs would be funded by the OSLTF. With respect to hazardous substance responses, the source of funds would continue to be the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA; P.L. 96-510) Superfund.

SECTION 221. USE OF UNEXPENDED FUNDS FOR BRIDGE ALTERATIONS UNDER TRUMAN-HOBBS ACT.

This section provides that funds appropriated or otherwise available for a bridge alteration project that has been completed, may be used to pay the Federal Government's share of design and construction costs of other bridge alteration projects authorized under the Truman-Hobbs Act.

The Truman-Hobbs Act, 33 U.S.C. 511-523, provides that no bridge shall at any time unreasonably obstruct the free navigation of any navigable waters of the United States. If the Commandant determines that alteration is necessary in order to render navigation through or under a bridge "free, easy, and unobstructed," then the Commandant issues an "Order to Alter."

Currently, there are 13 unreasonably obstructive bridges under a Truman-Hobbs Order to Alter. Of the 13, however, only 8 alteration projects have started. Two projects are in the initial phase of design; two are ready to go to construction; three are in the final phase of design; and one is in the final phase of construction. The Bridge Alteration program estimates that funds appropriated and earmarked for the seven projects are, in some cases, inadequate at this time to complete the project. In other cases, the designated funds will exceed overall project needs.

SECTION 222. INLAND NAVIGATION RULES PROMULGATION AUTHORITY.

This section removes the Inland Navigation Rules from 33 U.S.C. 2001 and codifies them in Title 33 of the Code of Federal Regulations. This change allows for more public input for future changes to the Inland Navigation Rules and allows the Inland Navigation Rules and the International Rules for Preventing Collisions at Sea to be as similar in both content and format as possible. This proposal also streamlines the process for allowing changes to the Inland Navigation Rules to enter into force on the same day as changes to the International Rules for Preventing Collisions at Sea.

SECTION 223. PREVENTION OF DEPARTURE.

This section allows the Coast Guard to conduct inspections to ensure that a passenger vessel calling on a U.S. port complies with SOLAS so long as a U.S. citizen passenger is aboard.

Current law authorizes the Secretary to prevent a foreign passenger vessel from departing a U.S. port, with passengers who are embarked at that port, if the Secretary finds that the vessel does not comply with the standards stated in the International Convention for the Safety of Life at Sea (SOLAS). However, the statute does not provide a similar authority to the Secretary regarding control of a foreign passenger vessel that may have embarked passengers from a nearby foreign port and is conducting a voyage to a U.S. port. The result of this distinction is that a foreign vessel embarking U.S. passengers from a neighboring country such as Canada or a Caribbean country and calling on U.S. ports, would not be subject to the same detailed examination as a foreign passenger vessel embarking passengers from U.S. port conducting a similar voyage. Without the ability to conduct to such an examination, it is difficult for the Coast Guard to assure that such vessels are in compliance with SOLAS regulations.

SECTION 224. DEFINITION OF VESSEL ENGAGED ON A FOREIGN VOYAGE.

This section requires foreign flagged vessels departing and returning to the same U.S. port, or returning to another port under the jurisdiction of the United States, to comply with the International Safety Management Code (ISM) when any part of the voyage occurs on the high seas. This provision would ensure that vessels departing and returning to the same port, with no port calls in between, the so-called "voyages to nowhere", are subject to the International Safety Management Code.

SECTION 225. COMMERCIAL FISHING VESSEL MANDATORY EXAMINATION REQUIREMENTS.

This section authorizes the Secretary of Transportation to prescribe regulations to ensure compliance with fishing vessel safety standards through mandatory periodic safety examinations.

The Secretary is currently authorized to prescribe regulations which require uninspected fishing vessels, fish processing vessels, and fish tender vessels to be equipped with safety devices and to meet safety standards (46 U.S.C. 4502). That statute requires the Secretary to examine vessels for compliance with these safety standards at least once every two years. However, the mandatory examination authority does not apply to fishing vessels, only to fish processing vessels and fish tender vessels engaged in the Aleutian trade.

SECTION 226. INSPECTIONS AND EXAMINATIONS.

This section gives the Secretary the discretion 1) establish the frequency of inspections for vessels, crew quarters, and foreign tank vessels certificates of compliance; and 2) when a deficiency is found, to suspend or revoke the certificate of inspection, or to allow a vessel to continue in operation. The section also clarifies that 1) the owner, charterer, managing operator, agent, master, or individual in charge of a vessel must promptly correct any deficiencies to ensure compliance with the vessel's certificate of inspection; and 2) the Coast Guard is not responsible for designating the manner in which the deficiency is corrected.

Under current law, passenger vessels, nautical school vessels, and small passenger vessels that engage in foreign voyages must be inspected at least once each year and all other vessels be inspected at least once every five years. Crew quarters must be inspected monthly.

Under current law, an inspected vessel must comply with its certificate of inspection. There is some concern that current law implies that a vessel owner, charterer, managing operator, agent, master, or individual in charge of a vessel must correct any deficiency only when ordered to do so in writing. A strict interpretation current law would also could read to require the Secretary to suspend or revoke a certificate of inspection any time a discrepancy is discovered, no matter how minor or technical.

SECTION 227. TANK LEVEL AND PRESSURE MONITORING DEVICES.

This section gives the Secretary the discretion to issue regulations regarding

minimum standards for devices warning of overfills and tank levels of oil in cargo tanks and devices for monitoring the pressure of oil cargo tanks.

TITLE III – COAST GUARD PERSONNEL, FINANCIAL AND PROPERTY MANAGEMENT

SECTION 301. ENLISTED MEMBER CRITICAL SKILL TRAINING BONUS.

This section would authorize the Coast Guard to offer an incentive bonus to encourage enlisted members to enter certain critical skill specialties. The Coast Guard currently has authority to offer enlistment bonuses (37 U.S.C. 309) and retention bonuses (37 U.S.C. 323), but does not have authority to offer a bonus to a member who voluntarily enters specialty school to gain training in a critical skill. This proposal authorizes such a bonus to enlisted members who complete training in a skill designated as critical, provided at least four years of obligated active service remain on the member's enlistment at the time the training is completed.

The Coast Guard has shortages of enlisted members on active duty in certain critical skills, such as Electricians Mate, Electronics Technician, Food Service Specialist, Machinery Technician, Storekeeper and Telecommunications Specialist. Most of these skills result in assignments to ships, where being a junior enlisted Coast Guardsman is often very difficult due to working conditions and time spent at sea. Therefore, the Coast Guard has difficulty in encouraging junior enlisted personnel to seek out these specialties. The authority to provide an incentive bonus to enlisted members will assist in curtailing the shortages in certain critical skills.

SECTION 302. LIMITS TO THE NUMBER AND DISTRIBUTION OF OFFICERS.

This section 1) sets a new ceiling of 7100 Coast Guard officers; 2) permits the number of officers to exceed the ceiling in times of war or national emergency; and 3) authorizes the Secretary of the department in which the Coast Guard is operating to designate the number of officers. This section also permits an increase in the percentage of Commanders and Lieutenant Commanders to an average of the levels in the other Armed Forces

The number and distribution of commissioned officers in the Coast Guard is set by statute. Currently, the overall number of officers cannot exceed 6,200. Increased homeland security requirements, however, are expected to drive up the officer needs of the Coast Guard by 17%. With a current officer corps of approximately 5,600 officers, an additional 900 officers for homeland security missions will require a change to the officer ceiling. The increase in the existing ceiling will accommodate the homeland security increase, and retain the margin that the existing 6,200 ceiling provides over the actual 5,600officer strength.

The number of Commanders and Lieutenant Commanders is restricted to 12 percent and 18 percent, respectively, of the number of officers in the Coast Guard. These levels are lower than those of the other Armed Forces. Had this section been in effect in

Fiscal Year 2001, the Coast Guard officer distribution would have been 15% for Commanders and 22% for Lieutenant Commanders.

SECTION 303. MAXIMUM AGE FOR RETENTION IN AN ACTIVE STATUS.

This section changes the mandatory age at which a Reserve officer is transferred to the Retired Reserve from sixty-two years of age to sixty years of age and would change the mandatory age at which a Reserve officer (other than those eligible for retirement or a Reserve rear admiral or rear admiral (lower half)) shall be discharged from sixty-two years of age to sixty years of age. It aligns Coast Guard officers' maximum retention age with that of other armed services officers, and would also codify the longstanding Coast Guard policy to remove officers from active status at age sixty.

SECTION 304. TERM OF ENLISTMENTS.

This section authorizes the Commandant of the Coast Guard to accept original enlistments for other than full years, and reenlistments for any term of years and months from two years to six years. This would make Coast Guard enlistments consistent with Department of Defense enlistments. The Coast Guard will gain greater billet alignment between commands and assignments during transfer seasons, improved flexibility in maintaining force readiness, and greater flexibility in maintaining authorized strength levels.

SECTION 305. REQUIREMENT FOR CONSTRUCTIVE CREDIT.

Current section 727 of Title 14 requires that a Reserve Law Specialist be given a minimum of three years constructive credit upon assignment or designation. This section would reduce the amount of mandatory constructive credit to only one year. It will allow the Coast Guard to consider the officer's education and experience, potential career opportunities, and service needs to determine appropriate credit.

SECTION 306. EXPANSION OF COAST GUARD HOUSING AUTHORITIES.

This section provides the Coast Guard with the same direct loan authority for the acquisition and construction of housing currently available to the Department of Defense.

SECTION 307. PROPERTY OWNED BY AUXILIARY UNITS AND DEDICATED SOLELY FOR AUXILIARY USE.

Under current law, it is unclear whether unincorporated elements of the Auxiliary may own property. This proposal would amend section 821 of Title 14 to clarify the intent that Auxiliary elements and units may own personal property in order to carry out the purpose of the Auxiliary as set forth in Section 822.

Property owned by Auxiliarists and Auxiliary organizational "elements" (such as the national board, districts, regions, divisions, and flotillas) is not considered Federal property. However, while the Auxiliary-owned personal property is being used by an

Auxiliarist in the performance of official duties, the property *is* considered Federal property for liability purposes to protect the Auxiliary (the property's owner/operator). Motorboats and yachts, aircraft, and radio stations are specifically deemed, by statute, to be *public* vessels, aircraft, and radio stations "while assigned to authorized Coast Guard duty." Therefore, as to vessels, aircraft, and radio stations, the Auxiliary (owner/operator) is entitled not only to liability protection, but also to expense reimbursement for use of the personal property on behalf of the Coast Guard — and even repair or replacement— under appropriate circumstances, with approval of the Commandant and subject to the availability of funds.

When the Auxiliary statutes were overhauled in 1996, this scheme was retained. However, organizational elements of the Auxiliary (districts, regions, divisions, flotillas, etc.) are increasingly receiving donations of property — vessels, trailers, fax machines, real property, etc. In some cases, the elements are incorporated. In others, they are unincorporated. The Coast Guard is concerned about the liability of individual members (whether or not a given unit is incorporated) that could arise if Auxiliary Unit-owned personal property causes personal injury or property damage while being *available* for Auxiliary use, but not actually *in* use. An example would be a stored vessel owned by a flotilla that catches fire and damages other vessels located nearby.

This proposal, if enacted, would provide that real and personal property owned by a unit of the Auxiliary shall be considered federal property for liability purposes at all times unless the property is being used outside the scope of the Auxiliary mission under Section 822 or this Title. The property would not be considered Federal property for any other purpose or other law other than as contained in the existing statutes pertaining to the Auxiliary (Public Vessel Act, Suits in Admiralty Act, Vessels of the Coast Guard or Coast Guard Aircraft). The proposal also provides reimbursement of operation, maintenance, repair or replacement of the property may be made from appropriated funds to the same extent as other property being used by the Auxiliary for Coast Guard service, with approval of the Commandant and subject to the availability of funds.

SECTION 308. COAST GUARD AUXILIARY UNITS AS INSTRUMENTALITIES OF THE UNITED STATES FOR TAXATION PURPOSES.

When the Auxiliary statutes were overhauled in 1996, Auxiliary organization elements of the Auxiliary were statutorily deemed "instrumentalities of the United States" for tort liability purposes only, if unincorporated. The statutes are silent as to the status of the Auxiliary itself, and its various organizational elements vis-à-vis Federal and State income, property, sales, or other taxation.

The Auxiliary has received an IRS determination that the "Coast Guard Auxiliary" is tax-exempt. However, as a result of the amendment of the Auxiliary statutes in 1996 in which the Auxiliary was deemed to be an instrumentality of the United States only for specific purposes, the tax-exempt status of the Auxiliary was not addressed. As a result, it may appear that the 1996 Act changed the tax-exempt status of the Auxiliary which was entirely inadvertent and not an intended result. Therefore, this section clarifies that the tax-exempt status of the Auxiliary was not meant to change and

that the Auxiliary and each of its organizational elements and units is tax-exempt for all purposes to the same extent that it has enjoyed under the Internal Revenue Service Ruling.

This proposal would amend section 821 of Title 14 to provide that organizational elements and units of the Auxiliary "shall be considered instrumentalities and a political subdivision of the United States for taxation purposes and those purposes as provided under Title 4, section 107, USC." Such a provision would allow donations to the Auxiliary to be deductible, and would provide a basis for exempting Auxiliary units from having to pay State property taxes on the real and personal property they own and levy and remit state sales tax for any goods and services that it may sell.

SECTION 309. CLARIFICATION OF COAST GUARD EXCHANGE SYSTEM EXEMPTION.

The Randolph-Sheppard Act (20 U.S.C. 107 et. seq.) authorizes blind persons licensed under the Act to operate vending facilities on Federal property. If there is no blind licensee operating the vending facility, then vending machine income obtained from the operation of vending machines on Federal property goes to the State agency in whose State the Federal property is located, for the uses designated in the Act.

There is an exemption in the Act for vending facilities within retail sales outlets operated under exchange or ships' stores systems authorized under Title 10, United States Code. All of the military services' exchange systems are authorized under Title 10, except the Coast Guard exchange system, which is instead authorized under Title 14. The military exclusion that was added in 1974 only applied to Title 10-authorized exchange systems.

SECTION. 310. NONAPPROPRIATED FUND INSTRUMENTALITIES.

This section provides authority for Coast Guard exchanges and morale, welfare and recreation systems (MWR) to enter into contracts or other agreements with another department, agency or instrumentality of the Coast Guard or another Federal agency to provide goods and services beneficial to the efficient management and operation of the exchange and MWR systems. This section would provide Coast Guard Exchanges parity with Department of Defense non-appropriated fund instrumentalities (10 U.S.C. 2482a).

SECTION 311. ADMINISTRATIVE, COLLECTION, AND ENFORCEMENT COSTS FOR CERTAIN FEES AND CHARGES.

Under current law, there are three statutes pursuant to which the Coast Guard collects user fees for its services. The Independent Offices Appropriations Act, 31 U.S.C. 9701, passed in 1951, is general user fee authority that applies to the entire Federal Government, including the Coast Guard. Also, under 46 U.S.C. 2110, the Secretary is required to establish user fees for services provided under subtitle II of title 46, United States Code (primarily marine safety activities, *e.g.*, inspection of certain vessels; licensing, certification and documentation of personnel, etc.). Finally, section

664 of title 14, United States Code, provides authority for the Coast Guard to establish user fees for goods and services it provides.

The purpose of this proposal is to amend both section 664 of Title 14 and section 2110 of Title 46 to better coordinate the statutory provisions governing fees and charges currently levied by the Coast Guard for services furnished under subtitle II of title 46 and under titles 14 and 31, United States Code. This proposal does not establish a new user fee or seek to authorize the collection of any amounts in excess of the full (direct and indirect) costs of providing a given service for which the fee is being charged.

Currently, the Secretary is authorized to recover appropriate collection and enforcement costs associated with delinquent payments of the fees and charges associated with services provided under subtitle II of title 46 but not under section 664 of title 14. This proposal would clarify that, for fees authorized under section 664 of title 14, the Coast Guard's collection and enforcement costs resulting from the delinquent payment of fees and charges by users are included in costs authorized to be recovered, as they are under section 2110(c) of title 46; that the amounts recovered are authorized to be deposited to the general fund of the Treasury; and that the Secretary may employ a Federal, State, local, or private entity to collect the fees or charges. These are normal administrative costs and generally included in the full cost calculation when establishing the user fee.

Further, the proposal would amend title 14 and subtitle II of title 46 to define the user fee administration costs that are recoverable to include administrative, accounting, personnel, contract, equipment, supply, training, and travel expenses. It is reasonable to assume that administrative costs include the costs of accounting, administration, processing, and financial management of user fees. This includes activities such as identification, billing, collection, review, calculation, and reassessment of such fees and charges (including the costs of program review and costs of any changes to the fee or charge structure); related costs of computer hardware and software and other office equipment, supplies, and furniture; personnel, training, and travel costs; costs of compilation and analysis of data; and costs of any contract for performance of the foregoing services. Currently, the statutory provisions in title 46 and title 14 are silent on this issue.

For example, OMB Circular No. A-25 requires that each agency review user charges for the agency's programs biennially, to assure that existing charges are adjusted to reflect unanticipated changes in costs or market values. The results of this biennial review are required to be discussed in the Chief Financial Officers Annual Report required by the Chief Financial Officer Act of 1990. However, the costs of conducting these biennial recalculations for each fee and for providing adequate program administration, oversight, and review are not provided to the Coast Guard. This is but one example of Coast Guard user fee management and oversight costs that must be borne by the Coast Guard.

To address this problem, this proposal would make parallel the provisions applicable to title 46 and title 14 pertaining to user fees. The Secretary would be authorized to recover appropriate collection and enforcement costs associated with

delinquent payments of the fees and charges for fees and charges authorized under title 14, as is currently authorized for title 46 fees and charges. Also, like title 46, it would insert into title 14 a provision allowing an agency to collect a fee or charge and, if it does so, require that all related costs be accounted for as reimbursable expenses and credited to the account from which expended. Lastly, for both titles, it would define what constitutes the costs of collecting a fee or charge, so that it explicitly includes reasonable administrative, personnel, contract, equipment, supply, training, and travel expenses related to administration, management, and oversight of user fees authorized by law. Importantly, this would include the compilation and analysis of cost and user data which, in recent years, both Congress and the Executive Branch have sought to obtain from Federal agencies on a recurring basis.

SECTION 312. COAST GUARD YARD AND OTHER SPECIALIZED INDUSTRIAL FACILITIES

This section assures the preservation of the Coast Guard Yard and other specialized industrial facilities as critical components of the Coast Guard's core logistics capability that directly support fleet readiness. This section qualifies the Coast Guard Yard and other specialized facilities as components of the Department of Defense for competition and workload assignment purposes. Furthermore, this provision authorizes the Coast Guard Yard and other specialized facilities to enter into public-private partnerships.

SECTION 313. EXCEPTION FOR INFLATABLE BOATS.

This section allows the Coast Guard to acquire rigid hull inflatable boats (RHIBs) manufactured in foreign countries. Currently, the Department of Defense has authority to make such acquisitions.

SECTION 314. GRANT AUTHORITY.

This section would give the Coast Guard authority to award grants or cash prizes for achievement in science, math, engineering, or technology education of an amount not to exceed a total of $20,000 in any fiscal year. The Secretaries of the military departments have similar authorities.

SECTION 315. USE OF MILITARY CHILD DEVELOPMENT CENTERS AND OTHER PROGRAMS.

This section provides clear authority for the Secretary of Defense and the Secretary of the Department in the Coast Guard to allow a child of a Coast Guard member to attend a childcare facility operated by the Department of Defense under the same arrangements as the child of a member of any of the other armed forces.

In certain areas of the United States, children of Coast Guard members attend military child development centers operated by the Department of Defense, and children of members of other armed forces attend facilities operated by the Coast Guard. Based on current attendance figures, it appears that just over 100 children of Coast Guard

members attend DOD military child development centers, and just under 100 children of DOD military members attend facilities operated by the Coast Guard. The Department of Defense recently raised concerns over the eligibility of Coast Guard children to attend its facilities.

SECTION 316. TRAVEL CARD MANAGEMENT.

Section 1008 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Pub. L. No. 107-314) authorized the Secretary of Defense to require disbursement of travel or transportation expenses directly to the issuer of a Defense travel card. It also authorized pay offsets for delinquent accounts. . This section authorizes the Secretary of the department in which the Coast Guard is operating to establish similar requirements for Coast Guard military members and civilian employees who hold Federal contractor-issued travel charge cards. This amendment is consistent with executive and legislative initiatives to reduce delinquency rates among holders of Federal contractor-issued travel charge cards.